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Approved:


BRENDAN R. MCGUIRE
Assistant United States Attorney

Before: HONORABLE GABRIEL W. GORENSTEIN
United States Magistrate Judge
Southern District of New York

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UNITED STATES OF AMERICA :
 :
-v- : COMPLAINT
 :
✓ ROBERTO ORTIZ, and : Violation of
HECTOR DURAN, : 21 U.S.C. § 846
 :
 : COUNTY OF OFFENSE:
Defendants. : BRONX
- - - - - x

SOUTHERN DISTRICT OF NEW YORK, ss.:

LOUIS M. SCHMIDT, being duly sworn, deposes and says that he is a Special Agent with the Drug Enforcement Administration ("DEA"), and charges as follows:

Count One

1. In or about April 2007, in the Southern District of New York and elsewhere, ROBERTO ORTIZ and HECTOR DURAN, the defendants, and others known and unknown, unlawfully, intentionally, and knowingly did combine, conspire, confederate and agree together and with each other to violate the narcotics laws of the United States.

2. It was a part and an object of the conspiracy that ROBERTO ORTIZ and HECTOR DURAN, the defendants, and others known and unknown, would and did distribute and possess with intent to distribute a controlled substance, to wit, five kilograms and more of mixtures and substances containing a detectable amount of cocaine, in violation of Title 21, United States Code, Sections 812, 841(a)(1), and 841(b)(1)(A).

(Title 21, United States Code, Section 846.)

The bases for my knowledge and the foregoing charges are, in part, as follows:

3. I am a Special Agent with the DEA, and I have been personally involved in the investigation of this matter. This affidavit is based in part on my conversations with other law-enforcement agents and my examination of reports and records. Because this affidavit is being submitted for the limited purpose of establishing probable cause, it does not include all the facts that I have learned during the course of my investigation. Where the contents of documents and the actions, statements and conversations of others are reported herein, they are reported in substance and in part, except where otherwise indicated.

4. On or about April 11, 2007, based on information obtained in connection with an ongoing investigation involving narcotics activities, I, along with three other DEA agents, conducted surveillance at a hotel in the vicinity of South Street Avenue and 11th Street in Queens, New York, the "Hotel". While conducting surveillance, one of the agents "Agent 1" walked through the lobby of the hotel and observed four males standing together in the lobby. Two of the four males were later identified to be ROBERT SMITH and RICHARD SMITH, the defendants. Approximately 10 minutes later, another agent "Agent 2" observed the four males in the lobby and one of the males was walking with the piece of rolling luggage the "luggage". Agent 3 then observed the four males get into a black Volvo station wagon with three female license plates the "Vehicle" along with the luggage.

5. According to records from a law enforcement database, which I have reviewed, the Vehicle is registered to "Hector Lujan."

6. After further surveillance, I observed the Vehicle drive to the vicinity of 108th Street Road in the Bronx, New York. At that location, I observed one individual in the driver's seat of the Vehicle, one individual passing the Vehicle from the rear, later identified as RICHARD SMITH, the defendant, and a third individual standing on the sidewalk near the Vehicle. The three individuals appeared to be attempting to mark the Vehicle. After the Vehicle was parked, I observed the three individuals walk northeast on Street Road away from the Vehicle.

7. Approximately 25 minutes later, I received a radio call from the fourth DEA agent conducting surveillance "Agent 4", who informed me that the lights of the Vehicle had been turned on. After receiving the call, I began walking southwest on Street Road toward the Vehicle. Upon reaching the Vehicle, I observed an individual later identified to be ROBERT SMITH, the defendant, removing a bag from the Vehicle that resembled the

approximately 10:00 p.m. I saw CHILL then begin walking with the luggage away from the vehicle and began to enter the building at 1108 Boston Road. At that time, with my shield visable, I announced that I was a police officer and told CHILL to stop. CHILL then let go of the luggage and began to run. I, along with Agent 2, then chased CHILL for approximately 1 block in the vicinity of Franklin Avenue and 168th Street in the Bronx, New York. At that location, we apprehended CHILL and placed him under arrest.

10. While we were chasing ROBERTO CHILL, the defendant, Agent 2 secured the luggage, which CHILL had left near the entrance of 1108 Boston Road. Inside the luggage were 10 boxes of approximately 10 kilograms of cocaine. A field test of the substance contained in the luggage tested positive for cocaine.

11. After arresting CHILL, the defendant, was arrested, I returned to the building at 1108 Boston Road and CHILL had attempted to enter. At the discretion of the officers, I removed an individual, later identified to be HECTOR LUHAN, the defendant, attempting to enter the building. Among other things, I asked LUHAN where he was from. LUHAN said that he was from Rhode Island. I then asked LUHAN for identification and he produced a Rhode Island driver's license bearing the name "Hector Luhan." I then placed LUHAN under arrest.

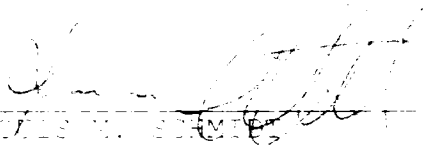
12. Following his arrest, HECTOR LUHAN, the defendant, was transported to the 41st Precinct Station House in the Bronx, New York, and then to the DA's office. At the DA's office, Agent 1 advised LUHAN in regard to his Miranda rights, which LUHAN subsequently waived in writing. After waiving his Miranda rights, LUHAN provided a written statement in which he stated in full and substance and among other things:

- a. He had driven from Rhode Island to the Bronx, New York that day with ROBERTO CHILL, the defendant, in a black Volvo.
- b. He was shown the luggage and indicated that it belonged to ROBERTO CHILL, the defendant.
- c. He and CHILL were in apartment 2C at 1108 Boston Road in the Bronx, New York the "apartment" earlier in the day. He left the apartment with CHILL and another individual "JIM", and all three of them drove in the Volvo to the hotel, where they met with a

7. Other individuals.

- a. After the meeting at the Motel, he returned to the Apartment with CRILL, and UM-1. At the apartment, DURAN overheard UM-1 on the telephone saying, in Spanish and Spanish, that the cost was \$22,000.

WHEREFORE, defendant prays that ROBERTO RUIZ and HECTOR RUIZ, the defendants, be imprisoned, be fined, as the case may be.



LOUIS E. SCHMITT
Special Agent
U.S. Department of Administration

Sworn to before me this
1st day of April, 2007.

UNITED STATES MAGISTRATE JUDGE
SOUTHERN DISTRICT OF NEW YORK

2007-115
Noted
[Signature]